

December 12, 2018

Mr. Andrew Funsch  
Century Engineering, Inc.  
10710 Gilroy Road  
Hunt Valley, Maryland 21031

RE: Atapco Properties, 9690 Deereco Road  
Forest Conservation Variance  
Tracking # 03-18-2843

Dear Mr. Funsch:

A request for a variance from Article 33, Title 6, Baltimore County's Forest Conservation Law was received by this Department on October 11, 2018. If granted, this variance would allow the removal of a specimen tree to facilitate construction of a new parking deck and storm drain outfall to serve an existing, mixed-use, 11.8-acre commercial property. The specimen tree to be removed is a 32-inch diameter American sycamore (*Platanus occidentalis*) in fair condition, whose roots and trunk are enveloping the badly failing end section of the existing outfall that is adjacent to the common property line with the MTA light rail. Consequently, this tree would eventually have to be removed regardless of whether or not the proposed development activity could be reconfigured to avoid the tree.

The Director of EPS may grant a special variance to the Forest Conservation law in accordance with criteria outlined in Section 33-6-116 of the Baltimore County Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the three criteria under Subsection 33-6-116 (d) must be met, and all three (3) of the criteria under Subsection 33-6-116 (e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116 (d)(1) of the Code) requires that the petitioner show that the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of his property. The applicant is seeking to undertake a multi-phased renovation and expansion of the current commercial development that existed well prior to the effective date of the Forest Conservation Law. Although full application of the law would result in an unwarranted hardship to the applicant, it would

not deprive the applicant of all beneficial use of the property. Therefore, we find that this criterion has not been met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions in the neighborhood. The petitioner's plight is due to the unique circumstances associated with the extremely close proximity of the specimen tree to the development's outfall and drainageway to be improved rather than the general conditions in the neighborhood. Therefore, we find that this criterion has been met.

The third criterion (Subsection 33-6-116 (d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The vast majority of the surrounding community consists of unforested commercial properties with few, if any, natural resources present. Therefore, removal of the lone specimen tree will not result in a change in use of the property or alter the essential character of the neighborhood. Therefore, we find that this criterion has been met.

The fourth criterion (Subsection 33-6-116 (e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. The proposed expansion will comply with current stormwater requirements for both quality and quantity management. Furthermore, this development activity proposes no direct impacts to streams, wetlands or associated buffers. Therefore, we find that granting of the special variance will not adversely affect water quality and that this criterion has been met.

The fifth criterion (Subsection 33-6-116 (e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance which is the result of actions taken by the petitioner. The petitioner has not taken any actions necessitating this variance prior to its request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116 (e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. Permitting the removal of a specimen tree in fair condition in conjunction with grading and installation of a suitable storm water outfall for the expansion of commercial uses on this property zoned accordingly would be consistent with the spirit and intent the Forest Conservation Law. Furthermore, the entire property will comply with the Forest Conservation Law by satisfying its 1.8-acre afforestation requirement. Therefore, this criterion has been met.

Based upon our review, this Department finds that all of the above criteria have been met. Therefore, the requested variance is hereby approved in accordance with Section 33-6-116 of the Baltimore County Code with the following conditions:

1. A \$904.50 fee-in-lieu of mitigation for the removal of the lone native specimen tree in fair condition shall be paid to Baltimore County's Forest Conservation Fund prior to issuance of any grading or building permit for the eastern parking garage and restaurant proposed as Phase II of this expansion. Fee checks must be made payable to Baltimore County and delivered to EPS.
2. This project's 1.8-acre afforestation obligation shall be met via purchase of credit in an EPS-approved forest retention or planting bank, due to the lack of onsite priority planting areas. In the event all offsite bank acreage is exhausted, a fee-in-lieu of mitigation payment of \$39,204.00 shall be submitted to Baltimore County. A bank authorization letter, which shall serve as the instrument of agreement with the bank representative, has been enclosed for your use. Once signed by the bank representative, this letter shall be returned to this office indicating that bank credit has been purchased prior to issuance of any grading or building permit for the western parking garage in Phase I of the expansion.
3. The following note must appear on the Limited Exemption Development Plan, the final Forest Conservation Plan (FCP), and all subsequent plans for this project:
  - "A special variance was granted on December 12, 2018 to Baltimore County's Forest Conservation Law to allow removal of one specimen tree onsite. Conditions were placed on this variance, including payment of a \$ 904.50 fee-in-lieu of mitigation."
4. A final FCP addressing the conditions of this variance, as well as the 1.8 acres of afforestation shall be provided prior to approval of the grading permit for the western parking garage in Phase I of the expansion. The plan accompanying the variance request may be used as a base plan for this FCP.
5. Prior to grading permit approval, an Environment Agreement shall be signed, and the Forest Conservation requirements shall be met as prescribed above.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

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Please have the appropriate representative sign the statement on the following page and return a signed copy of this entire letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please contact Mr. Michael Kulis at (410) 887-3980.

Sincerely yours,

David V. Lykens  
Acting Director

DVL/msk

Enclosure (1)

c. Marian Honeczy, Maryland Dept. of Natural Resources

I/we agree to the conditions enumerated in this approval letter to bring my/our property into compliance with Baltimore County's Forest Conservation Law.

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Atapco Properties Representative

Date

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Printed Name